

CLD-178

April 29, 2010

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **10-1876**

IN RE: JOSEPH DAVID ZEMBA,

Petitioner

Present: BARRY, FISHER and ALDISERT, Circuit Judges.

Submitted is Petitioner's application under 28 U.S.C. § 2244 to file a second or successive petition under 28 U.S.C. § 2255

in the above-captioned case.

Respectfully,

Clerk

MMW/SLW/awi

ORDER

The foregoing application under 28 U.S.C. § 2244 to file a second or successive motion pursuant to 28 U.S.C. § 2255 is denied. The petitioner relies on Chambers v. United States, 129 S. Ct. 687 (2009), Begay v. United States, 553 U.S. 137 (2008); and James v. United States, 550 U.S. 192 (2007), but he has not made a *prima facie* showing that these decisions state new rules of constitutional law, made retroactive to cases on collateral review by the Supreme Court. Nor does he assert that his claim rests on newly discovered evidence which, if proven, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found him guilty. See 28 U.S.C. § 2255(h).

By the Court,

/s/ D. Michael Fisher

Circuit Judge

Dated: 17 May 2010

Marcia M. Waldron

Marcia M. Waldron, Clerk

